

General Conformity 101

(40 CFR 93 Subpart B)

BLM Responsibilities in the UGRB Ozone Nonattainment Area and Implications for Future Oil and Gas Development

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May 22, 2012





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What is General Conformity?

- A process, promulgated in 1993 to implement Section 176(c) of the Clean Air Act to ensure actions conducted or sponsored by federal agencies in Nonattainment or Maintenance areas are consistent with the regulating authorities (WYDEQ) air quality goals.
- Requires that reasonably foreseeable emissions from federal actions will not cause or contribute to new violations of the NAAQS, increase the frequency or severity of existing NAAQS violations, or delay timely attainment of the NAAQS or any interim milestone towards achieving attainment.
- Applies to all federal actions. (Not covered by Transportation Conformity, or emissions covered by an applicable Transportation Implementation Plan).



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Key Concepts

General Conformity...

- is an open process with legal requirements - one year grace period before implementation is required after the final non-attainment designation is published
- has two components (Analysis and Formal Determination)
- covers federal activities - generally any action that requires either federal funding and/or federal approval
- determinations are made by the activity or project sponsoring federal agency (BLM, but applies to Forest Service and any other federal agency)
- is primarily an emissions-based system (direct and indirect)
- requires federal agencies to demonstrate conformity for projects in nonattainment or maintenance areas or the project cannot proceed



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The Analysis Process

Step 1: Define the Action / Project

1. What is the federal action?

ex: RMP, EIS, EA, APD, etc...

2. Is the federal action specifically exempt under § 93.153?

ex: Emissions that are not reasonably foreseeable § 93.153(c)(3) or the action is clearly de minimis § 93.153(c)(2).

Example: Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level are explicitly listed as an example of a federal action where emissions are not reasonably foreseeable.

3. What activities are going to occur in the designated area as a result of the federal action?



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The Analysis Process

Step 2: Estimate Emissions Caused by the Action / Project

4. Estimate both Direct and Indirect emissions caused by the action itself on an annual basis
 - **Direct** – construction, post construction (If the federal agency is controlling the construction activities or is approving the construction, then emissions should be considered direct)
 - **Indirect** – caused by the action but are removed from the action in either time or space (ex: employee commuting)

NOTE: All emissions have to be reasonably foreseeable, meaning estimates can be made based on acceptable techniques using reasonable assumptions.

NOTE: Indirect emissions must be of the type that "the agency can practically control" and for which "the agency has continuing program responsibility" meaning the agency has an oversight role over the activities generating the emissions or has the ability to limit the emissions by specifying requirements in a contract or by conditioning a permit (lease stipulations and conditions of approval).



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The Analysis Process

Step 2: Estimate Emissions... Continued

- Total direct and indirect emissions are defined as the net emissions increase caused by the action considering all the emission increases and decreases that are projected to occur.
 - Ex: If a federal agency takes an action to replace an operation at a facility with a different type of operation, the total direct and indirect emissions would be the difference between the emissions from the two operations (introduces the concepts of a baseline and creditable emissions reductions).

NOTE: Any portion of emissions which are *exempt or presumed to conform* are not included in the “total of direct and indirect emissions.” (i.e. Permitted sources are presumed to conform.)

NOTE: Any portion of emissions which occur outside of the designated area are not included in the “total of direct and indirect emissions.”



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The Analysis Process

Step 3: Compare Emissions to De minimis Thresholds

5. Are the total Direct and Indirect Emissions less than the listed De minimis thresholds?
 - **Thresholds for all criteria pollutants are listed under § 93.153 and correspond to designation status and severity of an area (For a Marginal Ozone NAA's outside an ozone transport region = 100 tpy of NO_x or VOC)**

IF - Emissions are < De minimis thresholds (or are otherwise exempt) for all years of project duration then a Formal Determinations is NOT required. The rules do not require official review or reporting, disclose in NEPA document

IF - Emissions are > De minimis thresholds for any year(s) of project duration then a Formal Conformity Determination is required



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The Formal Process

Basic Methods to Demonstrate Conformity

1. Document that the emissions from the action are identified and accounted for in the SIP;
2. Obtain a statement from the applicable air quality agency that the emissions from the action along with all other emissions in the area do not exceed the SIP emissions budget;
3. Have the state agree to include the emissions in a subsequent SIP revision;
4. Conduct air quality modeling to demonstrate emissions will not cause or contribute to a NAAQS violation (modeling option is NOT available for O₃, NO₂ and some PM_{2.5} areas); or
5. Mitigate or offset ALL the emissions from the proposed action (not just those above the De minimis threshold)



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The Formal Process

Mitigation Criteria

- Mitigation measures must be in place before the project starts, and any agreement (implementation plan) for the reduction of the emissions must be signed and included with the Conformity demonstration.
- Reductions must equal the annual increase in emissions caused by the action.
- EPA and the States will enforce the requirements of the emission reduction measures used as an offset.
- Mitigation measures can be modified after the federal agency has completed its conformity demonstration by following the procedures used to establish the original measures.



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The Formal Process

Offsets Must be:

Quantifiable – The federal agency must be able to quantify the emissions reduced using standard techniques for determining emission reductions.

Surplus – The emission reduction measure must not be required by the SIP, TIP, or other environmental laws or regulations.

Enforceable – EPA or the State must have the ability to enforce the emission reduction measures. This can be done by including the measure in an operating permit or similar mechanism or by including the reductions in the SIP.

Permanent – The emission reductions must be permanent within the timeframe of the emission increases caused by the action.

Adequately supported – The federal agency must show that there are adequate resources to implement the emission reduction measure.



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The Formal Process

Special Considerations

- Seasonal Emissions - if a conformity determination is required, then the season of the emissions may be relevant to determining if the emissions conform with the SIP.
- Elements of a project that receive major or minor New Source Review permits are exempt.
- Prescribed fire operating under an approved smoke management plan is exempt.
- Alternate offset schedules are allowed under certain circumstances (only if authorized by the State or EPA).



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The Formal Process

Step 4: Demonstrate Conformity

6. Identify specifically how Conformity is achieved. Must be supported-- EIS will require an Implementation Plan and Schedule.
7. Provide for public comment via notice in a daily newspaper of general circulation in the area affected by the action.
 - **Conformity regulations require agencies to provide copies of the draft demonstration to EPA and other affected federal agencies, states, tribe, local agencies, and the public, and allow a minimum of 30 days for comment.**
 - **In addition to the above organizations, the draft demonstration must be provided to the federal agency or federal official charged with the direct responsibility of designated Class I areas within 100 km of the action and allow a minimum of 30 days for comment.**
8. Within 30 days of making its final determination, the federal agency must notify the reviewer(s) and the public of the determination in the manner specified above.



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Implications for Future BLM Management Actions

- **New requirements for APDs and EAs:**
 - Emissions inventory and operator-committed mitigation measures must be provided.
 - Additional Guidance will provided to Operators by the BLM
 - Conformity must be addressed in the NEPA document, but these actions will typically be below the de minimis emissions threshold.
- **Larger projects that require an EIS (LaBarge, NPL) will be required to demonstrate Conformity through emission offsets, voluntary permits, mitigation, and/or pacing or phased development.**



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Questions?